

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Kenneth H. Tarbet

Serial No.: 09/888,031

Filed: June 25, 2001

For: GENERATION AND PROVISION OF  
DIRECTED SALES INCENTIVES AT  
LOCATIONS REMOTE FROM THE POINT OF  
SALE

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Group Art Unit: 2162

Examiner: Alam, Shahid Al

Confirmation: 7507

Mail Stop: Appeal Brief – Patents  
Commissioner For Patents  
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**CERTIFICATE OF FILING**

Pursuant to 37 C.F.R. §1.8, I hereby certify that this  
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*Edith S. Shek*  
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**REPLY BRIEF**

Dear Sirs:

This Reply Brief is filed in response to the Examiner's Answer and support for the appeal in the above referenced application. Appellant authorizes all required fees under 37 C.F.R. § 1.17 to be charged to Deposit Account No. 50-1515, of Conley Rose, P.C. of Texas.

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**I. STATUS OF CLAIMS**

**A. Total Number of Claims in the Application.**

The number of claims in the application is: 1 – 32.

**B. Status of All Claims in the Application.**

1. Claims canceled: 1-6, 8, and 11-15.
2. Claims withdrawn from consideration but not canceled: 26 – 32.
3. Claims pending: 7, 9, 10, and 16-25.
4. Claims allowed: None.
5. Claims rejected: 7, 9, 10, and 16-25.
6. Claims neither rejected nor allowed: None.

**C. Claims on Appeal.**

The claims on appeal are: 7, 9, 10, and 16-25.

**II. GROUND FOR REJECTION TO BE REVIEWED ON APPEAL**

1. Whether claim 7 particularly points out and distinctly claims the subject matter regarded as the invention under 35 U.S.C. § 112. The Examiner concluded that claim 7's recited steps "do[] not produce any results of the preamble" and that "it is unclear as to what the fashioning the third table had to do with functionality of the invention." See Final Office Action at 5.
2. Whether claims 7, 9, 10, and 16-25 are unpatentable under 35 U.S.C. § 102(b) over U.S. Patent No. 5,649,114 to Deaton et al., (hereinafter, "*Deaton*"). Specifically, whether claim 7 (the Application's independent claim from which all other claims of the Application depend), is unpatentable under § 102(b) based upon the Examiner's contention that *Deaton* contains all the elements of independent claim 7.

### III. ARGUMENT

In response to the Examiner's Answer mailed on July 8, 2009, Appellant submits this Reply Brief. Appellant respectfully reaffirms his positions stated in the Appeal Brief and respectfully traverses the Examiner's bases for continuing the rejections of the instant claims found in the "Response to Argument" section of the Examiner's Answer. *See* Examiner's Answer at 7-10.

#### A. **The Examiner's Section 112 Rejection.**

In his Answer, attempting to address the Appellant's arguments concerning the Section 112, second paragraph rejection of claim 7, the Examiner states that, "[s]ince, examiner could not find any word or term 'fashioning' and 'real time' or 'real time generation' in the entire specification, examiner interpreted these terminologies as one of ordinary skill in the art would interpret." *See* Examiner's Answer at 8. Accordingly, the Examiner interpreted "[r]eal time as to point of sale and fashioning as to organizing and/or maintaining database."<sup>1</sup> *See id.* After discussing his claim interpretations, the Examiner specifically states, "[w]ith the claim steps, one of ordinary person in the art should question how customer loyalty has to do with fashioning the table or fashioning the third table." *See id.*

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<sup>1</sup> Appellant notes that the Examiner's discussion of his interpretations of the terms "fashioning" and "real time" is irrelevant to the basis of his Section 112, second paragraph rejection of claim 7. Nevertheless, Appellant directs the Board's attention to the originally filed Application's claim 7 which reads in pertinent part, "fashioning the third table . . . ." *See* Application at 13. The Examiner's suggestion that the term is not supported because he could not locate the term "fashioning" in the specification is inaccurate. *See* MPEP § 608.01(i) (claims are part of the specification). The term has always been incorporated in the claims. Furthermore, the term "real time" was introduced into claim 7 via an amendment filed on October 15, 2007. Subsequent to that amendment, in the Office Action dated April 30, 2008 and the Final Office Action dated October 17, 2008, the Examiner never suggested that the term "real time" presented any issues regarding interpretation or specification support. Furthermore, for almost two years, the Examiner has been aware of the basis for the specific support for the "real time" amendment, *see* Response to Advisory Action dated September 18, 2007, and, in fact, entered the "real time" amendment and examined the claims in that context.

Appellant disagrees with Examiner's conclusion. Appellant believes that one of ordinary skill in the art, when reading claim 7, would **not question** the connection between the fashioning of table three and the provision of the customer incentive report to improve customer loyalty. See claim 7. Claim 7's "fashioning the third table" element is directly linked to "improving customer loyalty."

Claim 7 explicitly details the link between "fashioning the third table" and "improving customer loyalty." For example, claim 7 provides: (1) "[a] method of **improving customer loyalty** via real time generation and provision to a customer of a **customer incentive report** remote from a point of sale;" (2) "determining an intersection of **the promotion information**, the purchase information, and the customer information and storing the intersection in a database as the **customer incentive report**;" (3) "wherein the database comprises . . . **a third table** comprising **the promotion information**;" and (4) **"fashioning the third table"** with the identifier." See claim 7.

The highlighted portions of the preceding text reveal the link between "fashioning the third table" and "improving customer loyalty." As is evident, the "third table" comprises "the promotion information," "the promotion information" is used to generate "the customer incentive report," and "the customer incentive report" is generated and provided in real time to a customer remote from a point of sale as a way of "improving customer loyalty." The relationship between "customer loyalty" and "fashioning the third table" is explicit.

The Examiner's position is also refuted by the Examiner's own analysis. In rejecting claim 7 as anticipated by *Deaton*, the Examiner states that claim 7's limitation of "improving customer loyalty via real time generation and provision of a customer incentive

report from a point of sale,”<sup>2</sup> *see* Examiner’s Answer at 4 (claim 7’s language), is met by *Deaton*’s disclosure of “to improve a store’s marketing and other customer relations programs by collecting transactional data for that store, both current and historical, that can be used to identify new or infrequent customers, develop customer profiles and to perform targeted marketing.” *See id.* (citing *Deaton* at col. 4, lines 54-61).

Clearly, the Examiner understands that the collection and utilization of customer data (e.g., “fashioning the third table”) can be used to improve customer relations programs (e.g., “improving customer loyalty”). If the Examiner understands it, shouldn’t one skilled in the art understand it as well?

#### **B. The Examiner’s Section 102(b) Rejection.**

The Examiner’s Answer provides no explanation as to how *Deaton* can be construed to disclose the instantly claimed real time provision of a customer incentive report to a customer remote from a point of sale. *See* claim 7. The entirety of the Examiner’s discussion is limited to either the real time provision of coupons at a point of sale or the questionable conclusion that *Deaton* discloses the real time generation of coupons remote from the point of sale.<sup>3</sup> *See* Examiner’s Answer at 10 (the Examiner never explains how *Deaton* might disclose the real time provision of coupons remote from a point of sale). As such, Appellant simply reaffirms and reasserts the Appeal Brief arguments concerning the Section 102(b) rejections of the instant claims.

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<sup>2</sup> The Examiner’s paraphrasing of the claim 7 language is inaccurate and misleading. The Examiner’s paraphrasing omits claim 7’s description of the “real time generation and provision to a customer of a customer incentive report remote from a point of sale.” *See* claim 7 (emphasis added).

<sup>3</sup> The Examiner’s position appears to be *Deaton*’s disclosure of “prior credit verification systems” connected to a “point-of-sale terminal through telephone lines to a remote transaction processing system” somehow also discloses that those “remote transaction processing systems” generate and provide coupons to customers in real time. *Deaton* contains no such disclosure.

**IV. CONCLUSION**

In view of the above arguments the Appellant respectfully requests that the final rejection of the claims be rescinded and the case advanced to issue. Should the Examiner feel that a telephone interview would advance prosecution of the instant application, Appellant invites the Examiner to call the attorneys of record.

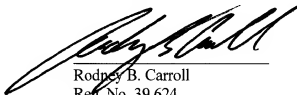
The Commissioner is hereby authorized to charge payment of any further fees associated with any of the foregoing papers submitted herewith, or to credit any overpayment thereof, to Deposit Account No. 50-1515, of Conley Rose, P.C. of Texas.

Respectfully submitted,  
CONLEY ROSE, P.C.

Date: \_\_\_\_\_

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